

**United States Department of Labor
Employees' Compensation Appeals Board**

C.Y., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Dallas, TX, Employer**

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**Docket No. 05-1805
Issued: October 2, 2006**

Appearances:

C.Y., pro se

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge

DAVID S. GERSON, Judge

JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 30, 2005 appellant filed a timely appeal of a May 16, 2005 decision of the Office of Workers' Compensation Programs, denying merit review of a January 12, 2005 merit decision. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case as well as the May 16, 2005 decision.

ISSUES

The issues are: (1) whether the Office met its burden of proof to terminate compensation for wage loss effective February 12, 2004; and (2) whether the Office properly determined that appellant's request for reconsideration was insufficient to warrant merit review under 5 U.S.C. § 8128 (a).

FACTUAL HISTORY

The case was before the Board on a prior appeal on the issue of a schedule award.¹ As the Board noted, the Office accepted that appellant sustained anxiety, depression and

¹ Docket No. 02-1971 (issued December 17, 2002).

post-traumatic stress disorder resulting from an assault and rape on April 22, 1998. The history of the case is contained in the Board's decision and is incorporated herein by reference.

Appellant remained off work and received treatment from Dr. Arnold J. Morris, an occupational medicine specialist. In a duty status report (Form CA-17) dated April 14, 2003, Dr. Morris diagnosed post-traumatic stress disorder and checked a box "yes" that appellant had been advised to resume work as of April 14, 2003. He checked boxes "yes" that appellant was able to work "full time."

By letter dated September 24, 2003, the Office advised appellant that it proposed to terminate her compensation for wage loss on the grounds that the medical evidence, as represented by Dr. Morris' April 14, 2003 report, established that her employment-related disability had ceased. The Office indicated that appellant may submit evidence within 30 days if she disagreed with the proposed action.

On November 21, 2003 appellant submitted additional medical evidence. In a July 28, 2003 report, Dr. Morris stated that appellant cannot return to work at this time. In a September 29, 2003 report, he stated that appellant was able to return to work since April 15, 2003.

Appellant submitted on February 2, 2004 a duty status report from Dr. Morris dated October 21, 2003. Dr. Morris diagnosed post-traumatic stress disorder anxiety. He checked "no" as to whether appellant was advised to resume work and "no" as to whether appellant was able to perform regular work. Dr. Morris also reported "[zero]" hours per day for all listed activity.

By decision dated February 20, 2004, the Office terminated compensation for wage loss effective February 12, 2004. The Office did not discuss the October 21, 2003 duty status report.

Appellant requested a hearing before an Office hearing representative, which was held on October 18, 2004. She submitted medical reports dated July 2 and August 25, 2004, from Dr. Sue Moss.

In a decision dated January 12, 2005, the hearing representative affirmed the February 20, 2004 termination decision. The hearing representative did not discuss the October 21, 2003 Form CA-17.

On May 11, 2005 appellant requested reconsideration of her claim. The medical evidence included a March 3, 2005 report from Dr. Morris, who stated that the April 14, 2003 duty status report was completed in error. Dr. Morris indicated that the boxes should have been marked "no" as appellant was unable to return to work as a result of her injury.

In a decision dated May 16, 2005, the Office determined that appellant's request for reconsideration was insufficient to warrant merit review of the claim.

LEGAL PRECEDENT

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.² The Office may not terminate compensation without establishing that disability ceased or that it was no longer related to the employment.³ The right to medical benefits is not limited to the period of entitlement to disability.

ANALYSIS

In this case, the Office terminated appellant's compensation for wage loss effective February 12, 2004, on the grounds that the medical evidence established that the employment-related disability had ceased. The Office found that the attending physician, Dr. Morris, had indicated in an April 14, 2003 duty status report that appellant could return to work full time. It was also noted that Dr. Morris had stated in a September 29, 2003 report that appellant was able to return to work since April 15, 2003. The record, however, contains an October 21, 2003 duty status report from Dr. Morris, indicating that appellant was not able to work. This report was more recent than the reports cited by the Office and would at minimum require the Office to seek clarification from Dr. Morris regarding the employment-related disability.

It is, as noted above, the Office's burden of proof to terminate compensation for wage loss. At the time of the February 20, 2004 decision, the medical evidence was not sufficient to meet the Office's burden, since the latest report from Dr. Morris indicated that appellant continued to be disabled. The Board accordingly finds that the Office did not meet its burden of proof to terminate compensation for wage loss effective February 12, 2004. In view of the Board's decision on this issue, it will not consider the reconsideration issue.

CONCLUSION

The Office failed to meet its burden of proof to terminate compensation for wage loss effective February 12, 2004.

² *Jorge E. Stotmayor*, 52 ECAB 105, 106 (2000).

³ *Mary A. Lowe*, 52 ECAB 223, 224 (2001).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 12, 2005 is reversed.

Issued: October 2, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board